

DISSERTATION

ON

Is Media Trial Bar to Fair Justice System: An Analytical Overview

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Declaration

I, Fahmid Hasan hereby declare that this research paper titled “Is Media Trial Bar to the Fair Justice System” An Analytical Overview is original work of mine and has never been submitted to any publication, Journal before. This research aims to finish my Undergraduate degree as a course. A list of references has been inserted.

Is Media Trial Bar to Fair Justice System: An Analytical Overview

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Abstract

Fair Trial is a fundamental right of an accused under Article 35 (3) of the Bangladesh Constitution. The Constitution also ensures freedom of expression and press, but reasonable restrictions exist. Sometimes, the media overexposed the news before the trial in high-profile cases. It destroys the administration of justice. So, the main focus of this research is to find out how media trials hinder fair justice and violate the rights of the accused in Bangladesh. The Paper will show the victimization due to media trials in other countries like India, the UK, USA. The paper will also focus on violating the existing fundamental right of an accused under the Constitution and the international instrument. This paper will suggest specific recommendation that was necessary to prevent the issue.

Chapter 1 - Introduction

1.1. Introduction

Media Trial is so popular around the world. Bangladesh is a democratic country, ensuring freedom of expression and press. The constitution also provides reasonable restrictions. Due to the pretrial publicity of the media, a fair trial could not be served and violated the rights of the accused. Due to overexposed coverage, many cases break the fair trial in common law countries like the USA and UK. Further, the police also instigated the accused to confess his guilt in front of the media. The judge also was influenced by the news in the pretrial stage.¹ This paper contains five chapters. First, it talks about the history, definition of media trials, and the fair trial system. Secondly, it shows the victimization of Media Trials in other countries like India, the USA, UK. Thirdly it describes the media trials from Bangladesh's perspective. Finally, an overall sum up will be discussed with recommendations and concluding remarks.

1.2. Literature Review

A few studies have been conducted on Media Trials from Bangladesh's Perspective. A few papers and articles were analyzed in this study. Hossain Fazlul Bari, in his writing, explained that the constitution ensures the freedom of the press and the right to a fair trial. Still, police-directed media trials destroy the administration of justice. Emadatul Haque did research where he opined that the constitution ensures press freedom, but the press should maintain reasonable restrictions

¹ Hussain Mohammad Fazlul Bari, 'Legal Aspects of Media Trial in Bangladesh: Free Press versus Fair Trial Dilemma' [2013] 13, 89 Bangladesh Journal of Law

when publishing in the pretrial stage.² Md. Pizuar Hossain researched the conflict between Media Trial vs the Right to Fair Trial and opined that any news in the pretrial stage portraying the accused statement before the court as a prejudiced report. It might be harmful to the Trial.³ The authors also tried to establish their point of view about the media trials above. Still, they did not analyse specific about the gross violation of constitutional provisions and existing laws with cases regarding these issues in Bangladesh. For such reason, I have decided to research this topic.

1.3. An object of the Research:

This research paper's main object and purpose are to find the impact of Media Trials on the fair justice system in Bangladesh. It will discuss the issue regarding victimization of Media Trail, freedom of the expression and press vs fair trial dilemma, Violation of Right of Accused in the light of Constitution, Universal Declaration of Human Rights and other provisions with their views, recommendations to ensure the fair justice system of Innocent/Accused before the Court. To establish the said issues, the paper will show the sufferings of the accused due to media trials in common law countries, the USA, UK, India and analysis the gross violation of Fair trials with case laws.

² Emdadul Haque, 'Balancing Freedom of the Press and Reasonable Restrictions in Bangladesh: An Appraisal' [2019] 3 Business Ethics and Leadership, 80-100

³ Md. Pizuar Hossain, 'Media Trial vs. Right to a Fair Trial: An Endeavour to learn about Existing Judicial Safeguard and Thinkable solutions' <<https://asianjournaloflegalstudies.wordpress.com/2016/08/31/media-trial-vs-right-to-a-fair-trial-an-endeavour-to-learn-about-existing-judicial-safeguards-and-thinkable-solutions/>> accessed 13 March 2022.

1.4. Research Question:

- (i) Whether The Media Trial violates the fair justice system and infringe the accused right?
- (ii) Does the freedom of the press impact the right to a fair trial, and does Pretrial publicity violate an individual's right to privacy?
- (iii) Does the Police Instigation of the accused to confess in Infront of the media before the trial justified?

1.5. Research Methodology

This research is qualitative-oriented. It is based on the Media Trial, which hindered fair justice. It has described statutes and case studies as a primary sources. It also followed national and international journal articles, newspaper articles, websites, and blogs as the secondary source.

1.6. Scope and limitation of the Research:

This research has been focused on the fundamental right of an Accused to get a fair trial as citizenship. It also focuses on the violation of the fair trial due to the pre-trial publicity, which affects the verdict in the light of constitutional provisions and other legal conditions. The limitation of the research is the inaccessibility of the resources. Still, few authors talk about the media trial from Bangladesh's Perspective with case laws, and no available articles were not found.

Chapter 2 - Introduction to Media Trial

Introduction: When a high-profile case comes in front of the court for trial, the mass people are excited about updating that particular issue. Whenever a person reads or follows the news headline about a specific case, he believes it basis on the headline and begins to think of that person as an accused. When the media announces a person is convicted before the trial, even without a final court verdict is called a Media trial.⁴

2.1. Definition of Media

Media is categorized by its technical ability. Some essential elements like Mechanical and electrics produce and determine their function. This feature works with Television, Print Media, radio, etc.⁵ The term Media is mainly derived from Medium. Canadian Professor Marshall McLuhan had first used this term. He also added that Media is a channel of communication that also produces education, culture, movies, and social messages.⁶ Before the invention of television and the internet era, print media was the only access to information. After creating TV and the internet, People can easily share their thought, criticism, and recommendations.

⁴ Shalu Shravan Singh, 'Media Trial And Its Impact On Evidence' (2020) <<https://www.legalserviceindia.com/legal/article-4005-media-trial-and-its-impact-on-evidence.html>> accessed 26 February 2022.

⁵ Kozma, Robert B. "Learning with media" [1991] 61 Review of Educational Research, 179.

⁶ 'What Is Media, Definition And Meaning' <<https://marketbusinessnews.com/financial-glossary/media-definition-meaning/>> accessed 12 March 2022.

2.2. Types of Media

The media is classified into four types.

1. Print Media
2. Broadcast Media
3. Out of Home
4. Internet

1. Print Media:

Once upon a time, it was the only source of entertainment to deliver the information. In the back 80s 90s, the author shows that print media played a vital role in society. It mainly contains in Magazine, politics, international news, Editorial site, Weather, sports, education, etc.

2. Broadcast Media:

It mainly deals with Television and Radio. Television has been a popular source of information nowadays. The main goal is to portray the actual scenario of the incident. It has included sports, animation, politics, culture, etc. For the betterment of society, it plays a vital role nowadays. Sometimes it influences society and spreads unethical news, which creates a negative impression in the community. Radio is another entertainment source for the people. This creates waves that transmit the information to the mass people.

3. Internet Media:

Internet media is so prevalent in the whole world. It comforts our life easier. Within minutes, it reaches thousands of people. Facebook, Twitter, YouTube, etc. are the leading social networking sites that help us connect with the global world.

4. Out of Home Media:

OOH, media mainly displayed out of the home and commonly as Billboard, Poster, etc. Non-Traditional OOH is another kind of Media that mainly produces Shopping Mall Advertising, Cinema Hall, Trackside Advertising, etc.⁷

2.3 Impact of Media

Audience influence is part of using media. It creates a way between the Audience and the Content first. Then the psychological effect is based on content.⁸ The previous research shows that most people interested in TV Programs have a selective capacity in mind, affecting the subconscious mind. This kind of involvement is Cognitive involvement. It shows the mental process of individual recognition. There is another kind of involvement that deals and connects with emotion. It calls emotional involvement. It influences a person psychologically and mentally. For example, if the media portray the impact of the book in our life, it reflects in mass

⁷ 'What Are The 4 Types Of Media' (*Pantograph*) <<https://pantograph.io/what-are-the-4-types-of-media/>> accessed 12 March 2022.

⁸ Elizabeth M.Perse 'Media Involvement and Local News Effects' (1990) 34 *Journal of Broadcasting & Electronic Media*, 18.

people's minds, and people also would be interested in buying the book because it influences in mind to capture the content.⁹ The unrecognized headline confused the people's perception and hindered getting to know the accurate information.¹⁰ Media also influence public opinion. For example, Pakistani media portrayed the news against the Taliban and spread a video on the social side which showed the Taliban flossing a female. Before the announcement, people were different perceptions, but this over and dramatic telecast modifies public opinion.¹¹

2.4. History of Media Trial

In the late 20th & early 21st centuries, the term 'Media Trial or Trial by Media' was invented by some local TV channels in UK & USA.¹² It was introduced and became famous by the incident of **Roscoe Fatty Arbuckle (1921)**. The charge was framed against Arbuckle for rape and murder. Due to a lack of evidence and investigation, he got a release in the third trial.

After being discharged from the courtroom, news & Media portrayed and tagged him as an 'Accountable' for that incident. Due to the publicity and over visualization, he lost his popularity and was discharged from the Film.¹³ In 1967, the '**The Frost Program**' show was telecasted on

⁹ ibid 19.

¹⁰ 'How Mass Media Influence Our Society' <[¹¹ M.A Mughal, 'Mass Media and its influence on Society' *The Daily Journalist* \(11 December 2013\) <<https://thedailyjournalist.com/pen-and-pad/mass-media-and-its-influence-on-society/>> accessed 17 March 2022.](https://www.nimcj.org/blog-detail/how-mass-media-influence-oursociety.html#:~:text=The%20negative%20effects%20of%20mass,the%20internet%20has%20been%20common.> accessed 11 March 2022.</p></div><div data-bbox=)

¹² Hossain. (n 3)

¹³ LITY MANISHA AND MEGHNA RAWAT, 'Trial by Media: Undermining of the Indian Judiciary' [2021] 3 *International Journal of Legal Science and Innovation*, 439.

Television. That Show portrays the insurance Fraud of Emil Savundra, which destroyed his personal life and carrier.¹⁴ Besides Indian subcontinent began to use this term back in 1990.¹⁵

2.5. Effects of Media Trial

When a newspaper or Media spreads the news, Millions of people see and believe it. Under the influence and pressure of the Media, Police also came forward to talk in front of the press before the investigation. It influences the people to disbelief upon investigation instead produce to concern on Media publicity. Then, it impacted society and confused people's thoughts about a particular case. The inquiry would not be adequately served due to the media's overexposure before the Trial.¹⁶

It also published the witnesses' names that might be a danger to their life & security. Every individual has a right to privacy under the constitution, but it is sorrowful that these prejudices violate a person's privacy.¹⁷

¹⁴ ibid

¹⁵ Hossain. (n 3)

¹⁶ Max Croson, 'Reflection of Media trial as a threat to our Judicial System' <<https://blog.iplayers.in/reflection-media-trial-threat-judicial-system/>> accessed 17 March 2022.

¹⁷ ibid

2.6. Concept of Fair Trial System

American Famous Writer Harry Browne explains about Fair Trial. He said that “A Fair trial is something where evidence is produced correctly, accused has the freedom to explain himself.

The Judge can execute according to courtroom context, and every argument shall be negotiated logically and has evidentiary values.”¹⁸

The right to a fair trial has been an essential principle of criminal Jurisprudence and is recognized by all countries. There are so many procedures to ensure proper justice. Some of them are ensuring independence in the Judiciary, free press, the presumption of innocence, Investigation without any hindrance, ban of an illegal arrest, etc.¹⁹ The Criminal proceeding follows that a person is innocent until proven guilty. The law has drawn up the presumption of innocence and gives strong instrumental proof in favor of the accused until sufficient evidence is produced. The international instrument talks about Fair trials. The Universal Declaration of Human Rights, 1948, ensures the Free and Fair trial of an accused in Article 10. Article 11 also says that everyone is innocent until sufficient evidence has been produced. Moreover, Article 12 ensures the Right to privacy of individuals.²⁰ Article-14(1) of the International Covenant on Civil and Political Rights also provides an equal right for everyone before the appearance of the court.²¹ The European convention on human rights talks about the fair trial in Article 6. Moreover, the trial must be held publicly, and all the press media may be excluded for a certain

¹⁸ Mr. Archishman Chakraborty & Ms. Swatilekha Chakraborty, ‘Trail by Media- A Discord of Right’ [2015] Bharati Law Review, 59.

¹⁹ *ibid*,60

²⁰ Furqan Ahmad, ‘Human Rights Perspective of Media Trial’ [2009] 1 Asia Law Quarterly, 53.

²¹ MD. TOUHIDUL ISLAM1 AND SYEDA KHADIJATUL KOBRA, ‘Media Trial and its Present Trend of Ensuring Justice in Bangladesh’ [2021] 4 International Journal of Law Management & Humanities, 529.

period.²² If we see the sixth amendment of the US Constitution, it shows that the right to a fair trial of an accused has been strengthened.²³ In the UK, the right to a fair trial had been protected by the human right act 1998. Article 6 ensures a fair trial in the UK.²⁴

The right to a fair trial is a constitutional right in India. If you see the Constitution of India, we can see that Article 21 ensures the right to a fair trial.²⁵

If you follow the Constitution of Bangladesh, Article 35(3) ensures the protection of the trial of an accused.²⁶ I can see in the above that the Fair Trial is a fundamental right for an individual, and every country shows its importance in that way.

²² European Convention on Human Rights 1950, Article 6(1)

²³ Archishman &. Swatilekha. (n 18) 59

²⁴ 'Your Right To Fair Trial' (*Citizen Advice*) accessed 26 March 2022.

²⁵ Shivani Nair 'Constitutionality of Media trials' <<https://blog.ipleaders.in/constitutionality-of-media-trials-and-landmark-cases/>> accessed 14 March 2022.

²⁶ The Constitution of Bangladesh, Art 35 (3)

Chapter 3 - Victimization of Media Trial in Other Countries

Introduction: Media trial has been a controversial issue in Today's world. The media can portray a topic that has been ruin a person's dignity and also changes the viewpoint of mass people.²⁷ The USA & UK has a strong rule to ensure fair trial but neither country protects the right of an accused from overexposed coverage. In UK, Due to the loopholes in the law and extreme media coverage, it is hard to maintain the fair trial. In the UK, there is no specific accountability if any one publishes prejudice news in the trial stage. Due to absolute right, trial court fail to apply the protective measure against prejudice news.²⁸ The gross violation of right of accused rapidly growth due to media trial than other countries. That's why we are going to shows the scenario of victimization in common law countries, especially the US, and the UK. India is another example of a media trial where it happens extremely.

So, this chapter will present the scenario of media trials in India, the USA, and the UK with proper case laws.

3.1. Media Trial in India

Media has been recognized as the fourth pillar of India. Article 19(1) of the Indian Constitution gives the right to freedom of expression. It also includes the freedom of the press, but article 19(2) provides a particular restriction. The overexposed publicity has destroyed the right of an accused and created prejudices in the fair trial before judgment. Due to this, the mass people have been victimized.²⁹

²⁷ MRS. LEENA CHANDRAN, 'Trial by Media: Its Implications on Fair Trial and Administration of Justice in India' [2020] 3 International Journal of Legal Science and Innovation, 196.

²⁸ Joanne Armstrong Brandwood, 'You Say Fair Trial And I Say Free Press: British And American Approaches To Protecting Defendant's Rights In High Profile Trials' (2000) 75 NYUL Rev. 1412.

²⁹ MANISHA AND RAWAT. (n 13) 435

It will now discuss some cases below.

Jessika Lal Murder Case

This case is a high-profile case of Media Trial. Jessika Lal worked at a bar. Manu Sharma, a political leader's son, shot Jessika Lal for refusing to give him alcohol. This case was run for seven years, and after that, he was acquitted due to the lack of evidence. The mass people had been excited about this case. The media portrayed the various overexposed news daily in a said matter which confused public opinion.³⁰ The print media tried to show the news against the court decision and blamed Mr Sharma's contracts with police to help him and bribe him. Due to the overexposed press coverage in this matter, it spread throughout India and crossed the border. Then Again, the Delhi high court had taken the case further and found the accused guilty in appeal. The high court also took the initiative to finish this case due to the public protest for Jessika. In the end, Mr Sharma was found guilty of this offense. This case gives us a prominent example of a media trial. The press must promote the individual right to a fair trial, but they create a hindrance to fair justice in said case.³¹

Aarushi Talwar Murder Case

In this case, Media gave their opinion before the final judgment and produced that the deceased parents conducted the murder of Talwar. The media published different information throughout the trial and revealed the deceased sexual intercourse with Hemraj. They blamed the deceased father for being involved in an extramarital affair. Everyone has a right to privacy, but it violates the right to privacy and creates a violation of privacy. This kind of unethical information affects mentally and psychologically deceased parents. After all the investigation and evidence, it

³⁰ ibid, 444

³¹ Hossain. (n 3)

proved that the dead parents were not involved. Due to the character evaluation by the media trial, they lose their self-esteem in society, and it won't be replaced again.³²

Sheena Bora Murder Case

Sheena Bora was working as an executive in Mumbai Metro. She was missing from home on 24th April 2012. After three years of Abduction, the Mumbai police arrested Sheena's mother, stepfather, and driver in 2015 for being charged that they were involved in that incident and killed her. Many years before Sheena Bora was proven guilty, local media portrayed it in different headlines. They questioned their character, which destroyed his social status and lost his fame.³³

Sushant Singh Rajput Case

Bollywood Star Sushant Singh's dead body was found in his home on 14th June 2020. After the incident, Sushant's father filed a complaint petition against Rhea Chakraborty. He claimed that Rhea was involved and abet his son to commit suicide. At that time, the media was telecasting that Sushant was murdered and influenced the mass people by the different headlines. The overexposure of the media trial hindered the pending case.³⁴

³²MANISHA AND RAWAT. (n 13) 445

³³ ibid, 445

³⁴ ibid, 446

3.2. Media Trial in the USA

In the constitution of America, there is no reasonable restriction on freedom of the press. It has a broad power. Freedom of the media can say or publish anything. Moreover, when a media publishes news about a pending case or creates prejudices towards mass people, there is no specific sanction; instead, it will violate the media if anyone obstructs media freedom.³⁵ This broader power victimizes the mass people and creates a hindrance to getting fair justice.

It will now discuss some cases below.

Rideau v. Louisiana

Rideau robbed a bank and hostage three employees from that bank, and killed one. After the incident, the local police sent him the jail. He interviewed in front of the county sheriff. He confessed his crime related to Bank Robbery and murder in press media. After the interview, it was telecasted on different TV channels before the trial. That news spreads to 64 % of people where the court's final decision would be held.³⁶

After the negative impact of the Media Trial, Rideaus Council prayed to change the location to a fair trial, but the court refused the prayer. In this case, we can see that the pretrial prejudices arising from the telecast of the interview on different channels created a hindrance to a fair trial.³⁷

³⁵ Aasia Hassan, 'MEDIA TRIALS: INVESTIGATIVE JOURNALISM VS. RIGHT TO FAIR TRIAL' [2020] 2 Indian Journal of Law and Legal Research, 8.

³⁶ Garfield Tenzer & Leslie Y, 'Social media, venue, and the right to a fair trial' [2019] 71 Baylor L. Rev, 427-428.

³⁷ Hassan. (n 34) 9

Sheppard v. Maxwell

In this case, several Negroes were accused of being sentenced to death. After the information, the local mainstream media and newspaper published the overexposed headline and article as if they had confessed their crime. Even before no confession was taken in Trial. The pretrial publicity hindered the fair trial. The newspaper was drawn with cartoons and features about that incident. The defense counsel prayed to the court to change the venue but was denied. In this case, only two jurists agreed that a fair trial was in danger due to the pretrial publicity and irritant publication.³⁸

Murphy vs. Florida

In this case, Murphy was accused of robbery. After the conviction, the newspaper and media spread it so fast that the jurors could know the detail of the crime before the verdict. Murphy's lawyer prayed to the court to change the venue due to media coverage but was denied it. The Supreme Court reversed the issue, and Marshall J explained that it's prejudiced not only the court but also destroyed a fair trial process. So, it's another example of the victimization of an innocent person.³⁹

Orenthal James (OJ) Simpson Case

Simpson was a professional footballer. He was charged with the murder of his ex-wife and the friend of his ex-wife. After the incident, Media overexposed this issue in the different headlines

³⁸ Frank Berndt, 'A Free Press and a Fair Trial: England v. the United States' [1961] 13 WESTERN RESERVE LAW REVIEW, 156.

³⁹. Hassan. (n 34) 9

and produced him accused. It also rapidly spreads so fast in every corner of the United States. In this situation, the main jury concluded the arisen issues were due to excessive media coverage. After all investigation and evidence, it was proven that he was not involved in that incident and released.⁴⁰ So, from this case, We can see the prime example of a media trial that violates the right to the fair trial of an accused.

3.3. Media Trial in the UK

The United Kingdom has reasonable restrictions on the freedom of media. The contempt of court act 1981 sec 4 (2) produces that when a trial is pending, it would be stopped for a specific period if the court thinks that any publication can prejudice the trial.⁴¹ The particular prescribed law would not be executed properly. Some cases and incidents are given below.

In R v Taylor we can see that Michelle and her sisters were convicted of murder. Michelle had an affair with the husband of the victim. They brutally killed the victim. After the incident, the media and press portrayed Taylor's sister and accused them since the trial. The media also creates fake images and videos for confused the mass people that were not relevant to the said case. Due to the overexposed prejudices, the jury convicted the two sisters of murder. Then appeal was held in 1993. The court of the appeal decided that the prosecution failed to prove their evidence and excessive press coverage was the behind scene to prejudice the decision of

⁴⁰ Hossain. (n 3)

⁴¹ Hassan. (n 34) 10

jurists in the trial. Then, after all the proceedings, the court of appeal acquitted Taylor's sister on the ground of over-excessive press publicity in the trial stage.⁴²

In 2001, footballer Jonathan and Bower were convicted of assault. When the case was pending, the Sunday Mirror published an interview of the victim's father, which was prejudicial in the court proceeding. Then, the Chief Justice stopped the trial and announced a second trial. Because of the coverage of Sunday Mirror, it was a risk of prejudice in the court decision. The court fined the newspaper for the bias in the trial. Moreover, in 1997 some persons were convicted for escaping from jail. When the trial continued, the London Evening published an article that prejudiced the court's decision. Then the jurist decided to stop the trial and punish the said newspaper company.⁴³

In Attorney-General vs Daily Star case, we can see that a 17 years old girl was raped, and few footballers were involved in this. After the investigation, they were released, but the Daily Star published the personal identity and photos of the suspects on the front page, which violated an individual's privacy. Moreover, in Attorney General vs Guardian newspaper case, the newspaper was published against the juror. It also posted that the case defendant was convicted of another offense. It creates prejudice in the trial session.⁴⁴

⁴² Bronwyn Naylor, 'Fair Trial or Free Press: Legal Responses to Media Reports of Criminal Trials' 53 The Cambridge Law Journal, 492-493.

⁴³ BBC News, 'How Prejudicial Reporting Has Led To Collapsed Trials'(24 June 2011) <<https://www.bbc.com/news/uk-13905765>> accessed 20 April 2022.

⁴⁴ Bari. (n 1) 94.

3.4. Pretrial Publicity and Subconscious effect of Media Trial on the Judges

If any news report discloses the fact of an innocent or accused in the pretrial stage is called Prejudice news.⁴⁵ Prejudice news can be true or false. An effect has been prejudiced for fundamental reasons that violate the fair trial procedure. Give an example: Acknowledge the Statement of an arrested person or opposite parties. Before the trial, it might not be possible to reveal it before the public because it hinders getting fair justice. In the **famous case of Shepherd**, I can see that the accused person's confessional statement was disclosed in the local newspaper. After that, the accused was charged due to that confession, while the confession statement was not produced as evidence in the trial.

Everyone has a right to confess themselves in the trial stage. The final process would be held on the base of evidence, but it violates the fair trial procedure when the media overexposes or highlights an issue. People are confused about dealing with it properly due to the unethical news.⁴⁶ Some cases occurred in the USA due to the Pretrial publicity and influenced the judges. For example, **Irvin v Dawd (1961)**, **Mumin vs. Virginia**. In the case of **Constantine and king (1980)**, it upheld that the judges can be influenced by the social background of an accused, the media coverage about that person before trial, and the amount of public sentiment.⁴⁷ If we look at India, it sees many cases directly connected to the effect of pretrial influence. **The Jessika Lal case (2010) & The Priyadarshini Case (2006)** were infected by the negative impact of the Media Trail. Judges are also human beings; also, they have an emotional attachment. In **Re: P.C**

⁴⁵ Hossain. (n 3)

⁴⁶ ibid

⁴⁷ Amy L. Otto, Steven D. Penrod, and Hedy R. Dexter, 'The biasing impact of pretrial publicity on juror judgments' [1994] 18 Law and Human Behavior, 454.

Sen, the most damaging part of the media trial is that the publication and coverage make a prejudice that affects Judge's mind and confuses the witness.⁴⁸ Besides, **Rao Harnarain vs. Gumani Ram** case showed that the Honorable Court advised to close down the coverage of media trials in pending cases because it subconsciously affects the jury's verdict.⁴⁹

In this chapter, we can see the actual scenario of the Media trial, which victimizes the right of an accused and influenced the jurist's decision. The next chapter will talk about Media Trials from Bangladesh's Perspective with case laws.

⁴⁸ MANISHA AND RAWAT. (n 13) 446

⁴⁹ *ibid*,447

Chapter 4 - Media Trial Hindrance to Justice: Bangladesh Perspective

Introduction: Media and justice are the pronounced words in today's world. It seems in every country; Bangladesh is also familiar with this. It plays a positive and negative impact on society. The constitution gives the press freedom, but due to the advantage, the media creates prejudice in the pending court, violating the right of an accused. It also makes a hindrance in the high-profile case. The judge is also get influenced by the overexposed publication. In Bangladesh, where democracy is maintained, it should be responsible for helping the fair justice; instead, it spreads news toward mass people by creating prejudiced headlines and violates the fundamental right.⁵⁰

4.1. Human Right Perspective Under Media Trial: Freedom of expression & Press vs. Fair Trial Contradiction

In Today's world, the right to freedom of expression & press has conflicting issues with the Right to Fair Trial. Freedom of the media spreads the information to the mass people, and a fair trial is also a constitutional right. It is questionable that freedom of press and expression creates a burden over a fair trial. Below the author will discuss the contradiction between these rights.

1. The Right to Freedom of Expression & freedom of the press

The Universal Declaration of Human Rights and the right to freedom of expression have connected with customary international law. Article 19 of the UDHR emphasizes the right to expression. The said instrument also protects the opinion of individuals. It also ensures the people's constructive criticism or thoughts about the judicial system.

⁵⁰ Islam & Kobra. (n 21) 524

Moreover, the right to freedom of the press is another wing that gives journalists the right to express their thoughts and spread information to mass people. For the sake of public interest, they can do anything. Every statute has some reasonable restrictions. The UDHR also mark reasonable condition based on circumstances. In many incidents, the journalist or media does not follow the rule or ethics and publishes prejudicial issues, which hinders fair justice of an accused. In this particular matter, UDHR articles 12 & 17 explains that no one is allowed to destroy the individual honour and dignity. In the name of freedom of speech and press, anybody can't harm the privacy and reputation of an individual.

2. The Right to Fair Trial

The right to a fair trial is also connected with the custom of international human rights law, which protects an individual from illegal activities and ensures fundamental rights. The UDHR Articles 6, 7, 8, 10, and 11 provide the right to an accused's fair trial. According to law, article 14(1) of the ICCPR emphasizes the free trial in criminal case proceedings. This right protects the individual against unlawful activity. The freedom of expression and press has reasonable restrictions, but a fair trial has no bindings.

So, from the above, we can say that press and fair trial are both part and parcel of ensuring fair justice.⁵¹ Sometimes it creates prejudice before the pending case and violates the constitutional framework. Article 39 of the Constitution of Bangladesh will not be followed if the media publishes fake news and misuse its freedom.⁵²

⁵¹ Hossain. (n 3)

⁵² Bari. (n 1) 91.

4.2. Violation of Law with Proper Cases

In Bangladesh, Media sometimes focuses on the pending case and publishes the previous history, which prejudices the court procedure. Moreover, in the name of investigative journalism misuses their right and is not consistent with the court's judgment. Before filling FIR and investigation, we also see that Media published the list of suspects, which grossly violated the person's dignity and life. It has no reason connected with the crime.⁵³ The video footage or identification that can be evidence might be prejudiced in pending cases. This creates a gross violation.⁵⁴

1. Violation of Law

Article 39 of the constitution ensures the freedom of expression and press. It is not absolute power determined by article 39 (2). The media trial violates Article 39 (2) (b) of the constitution.⁵⁵ The Police forcibly engaged the accused before the trial in front of the press and explained the person's guilt. It violates the right to privacy of an individual under Article 31 of the constitution of Bangladesh. No one has been allowed to destroy anyone's right to privacy.⁵⁶ The right to a fair trial has been ensured under article 35(3) of the constitution, where everyone has the right to a speedy in a public trial proper manner. Media Trial violated article 35 (3) of the constitution and created a hindrance to fair justice.⁵⁷

The Special Powers Act 1974 article 16 (1) explains that no person should be entitled to publish a prejudicial statement. Due to overexposed publication, it violates Article 16 (1) of

⁵³ MD. TOUHIDUL ISLAM AND SYEDA KHADIJATUL KOBRA, 'Media Trial and its Present Trend of Ensuring Justice in Bangladesh' [2021] 4 International Journal of Law Management & Humanities, 527.

⁵⁴ Bari. (n 1) 95.

⁵⁵ (n 26) Article 39.

⁵⁶ Islam & Kobra. (n 21) 528

⁵⁷ (n 26) Article 35(3).

the special power act 1974.⁵⁸ Sometimes, in sexual assault or child rape, the media publishes victims' photos, identities, and personal information. The child act 2013 section 28 prohibits publishing the report of child personal information. Due to the coverage of the Press, section 28 would be violated.⁵⁹

Moreover, publication of prejudiced news before pending trial or disclosing the identity that can affect the person's dignity, character, and profession is regarded as defamation. Section 499 under the penal code is violated due to coverage of defamatory news.⁶⁰

Nari o Shishu Daman Ain 2000 Article 14(1) emphasizes that when children or women are victims of an offense, it is forbidden to publish their identity or address before press media. Due to media coverage in the case of sexual assault or child rape, the media violate article 14(1).⁶¹ Code of conduct 1993 was fixed under the Press Council Act 1947. Section 16 talks about the pretrial coverage and refrains the journalists from coverage in the pending stage which can influence a fair trial. They also violate section 16 of the said act.⁶²

⁵⁸ Sabina Yeasmin and Khan Ferdousour Rahman, 'Implementation of press law for protecting human rights in Bangladesh' [2012] 4 Society and Change, 14.

⁵⁹ The Children Act 2013, s 28

⁶⁰ Haque. (n 2) 85

⁶¹ Nari-o Shishu Daman Ain 2000, Article 14(1)

⁶² 'What's The Word' (2014) <<https://archive.dhakatribune.com/uncategorized/2014/02/19/whats-the-word>> accessed 1 May 2022.

2. Now, it will discuss some cases as follows:

1. Sharmin Murder Case

In this case, It shows that Mr. Munir was convicted due to murder his wife. It occurred in 1989. They were going on a road trip. After returning to Dhaka, that murder had happened out of the grave on sudden provocation. After the incident, the accused confessed the matter before the magistrate, and media coverage turned into another dramatic headline. They cover that Mr Munir had an extramarital affair with Hosna Ara Khuku and demanded the death penalty. People were also misled in that case due to overexposed media coverage. In 1990 the trial was finished. The accused was found guilty and sentenced to death, and Khuku also. After filing the appeal, Mrs. Khuku was discharged from the said cases, and Mr. Monir's death penalty was executed. From this case, I can see that mentally and psychologically affects Mr. Munir due to dramatic coverage, and he also tried to attempt suicide. Moreover, Judge could not fairly decide due to the overexposed report.⁶³

2. Gulshan Attack Case

In 2006, Tahmid & Hasnat were arrested under section 54 of criminal procedure. The police arrested them based on suspicion. After the arrest, the photos of the accused were published in Media Headline. The media portrayed them as accused in their coverage before the trial. One of the accused, Tahmid, said that police forced him to carry the gun. He has no connection with that matter. Another is ambiguous, but it reveals that he was involved with a forbidden Islamic group. To reach a final decision, the previous history was checked. After the incident, police also

⁶³ Hossain. (n 3)

confessed that they had no conclusive evidence against them. The public also gives a different opinion based on publicity of media trials. At the end of the second trial, they were found guilty due to overexposed media coverage in the first trial.

In this case, we also see that, due to media coverage, fair justice could not be served and created prejudice.⁶⁴

3. Pori Moni Case

In this case, we can see that the RAB raid at Porimoni's house in 2021 found alcohol, drugs, etc. After the arrest, RAB surrendered her to the Banani Police Station and filed a case under Narcotics Control Act.⁶⁵ Before the trial procedure, the media portrayed it in dramatic headlines. The media published her previous history and also questioned her character. It creates misleading toward mass people. She has the right to protect the law under article 27 of the constitution, but a fair trial should not be served due to media coverage.⁶⁶ In this case, the High Court said that Porimoni had been victimized due to Media Trial during the detention period.⁶⁷

So, it's another example of a Media Trial where the fair trial would be hindered due to excessive coverage before the trial. She is the victim of the Media Trial.

⁶⁴ Nabil Ahsan, 'Media Trial: The Presumption of Innocence' *The Daily Star* {Dhaka, 17 April 2022}. <<https://www.thedailystar.net/law-our-rights/media-trial-the-presumption-innocence-1266499>> accessed 19 April 2022.

⁶⁵ Nurul Kabir, 'HC stays Pori Moni's trial in drug case' *NEWAGE* {Dhaka, 1 March 2022} <<https://www.newagebd.net/article/164093/hc-stays-pori-monis-trial-in-drug-case>> accessed 20 April 2022

⁶⁶ Shakhawat Liton, 'Doesn't Pori Moni deserve a fair trial?' *The Business Standard* {Dhaka, 8 August 2021} <<https://www.tbsnews.net/analysis/doesnt-pori-moni-deserve-fair-trial-285313>> accessed 20 April 2022

⁶⁷ The Daily Star, 'Pori Moni Was Victim Of Media Trial: HC' {Dhaka, 27 February 2022} <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/pori-moni-was-victim-media-trial-hc-2971996>> accessed 20 April 2022.

4.3. Pretrial Publicity amount to the court of contempt

If we look at our press, we can see that freedom of the media is ensured by article 39 but has a reasonable restriction. The media published the character, photos, personal information, previous history, and confession, which fell into court contempt. Moreover, sometimes dramatic headlines judging the innocent person as an accused and misleading the witness could be contempt of court.⁶⁸

The contempt of court act 2013 defined the concept of contempt court in section 2(8) (a) (b) (c). Section 2 (8) (a) (b) explains that anything writing, or oral that hindrance to administration of justice is called contempt of court.⁶⁹ The press code shows that the press council code has no effect in Bangladesh and does not have specific guidelines for pretrial publicity on court proceedings.⁷⁰

In State v. Swadesh Roy and Another, 12 ADC (2015) 932, The Supreme Court held that any news in the pending stage prejudiced the mass people against the innocent person before the trial, called contempt. In the case of Md. Riaz Uddin Khan Advocate and another v Mahmudur Rahman and others case show that no opinion would be immune if it exceeded and violated the court's reputation under Article 39 (2). If any citizen or publication misuses article 39, that will affect the court's dignity. The Supreme Court can punish under article 108 of the constitution.⁷¹

⁶⁸ Hussain M F Bari & Ishrat Zerin, 'An overview of the new Contempt of Court Act' *The Daily Star* {Dhaka, 20 April 2013} <<https://www.thedailystar.net/news/an-overview-of-the-new-contempt-of-court-act>> accessed 20 April 2022.

⁶⁹ 'Media Trial And Its Effect Over Judicial Proceedings' (*NILS Bangladesh*) <<https://nilsbangladesh.org/media-trial-and-its-effect-over-judicial-proceedings/>> accessed 19 April 2022.

⁷⁰ Bari. (n 1) 96

⁷¹ Haque. (n 2) 85

So, from the discussion, we can see that pretrial publicity in pending cases undermines the fair court procedure system and violates the court's dignity can be termed a contempt of court.

4.4. Police Instigation of Media Trial

In most cases, police forcibly introduced the accused before the media to confess the alleged crime. After the confession, the media portrayed it in the different headlines and spread through the mass people before the trial. It creates massive confusion for the public. Media also tagged the arrested persons with other names like the killer, drug dealer, etc. It violates the fundamental right of an accused, and the tagging name also injured the dignity of an accused, which destroys the legal protection right in the constitution. Due to the over-exposed newspaper, the mass people and judges were also influenced. Sometimes effects of a media trial, a lawyer doesn't show his interest in taking the accused's case.⁷² If we see the code of criminal procedure, it says that nothing is admissible when confessed in front of the police. According to law, the police must present the accused in front of the Magistrate within 24 hours.⁷³

Police have a responsibility to collect evidence in the pending stage. Sometimes the police directed the media to cover the case without admission or confession. It creates a gross violation of the fundamental right and shows the lack of activity of the police.⁷⁴

⁷² Bari. (n 1) 98

⁷³ *ibid*, 99

⁷⁴ Najrul Khasru, 'The alarming trend of trial by police' *The Daily Star* {Dhaka, 5 February 2022} <<https://www.thedailystar.net/views/opinion/news/the-alarming-trend-trial-police-2954461>> accessed 21 April 2022.

When a person is arrested, he should be punished based on the law. If the confessional statement had been published in front of the media before the trial with the instigation of the police, it would have destroyed the entire investigation procedure. The accused confessional statement before the media is unlawful and unconstitutional. It undermines the administration of justice. Sometimes the coverage of an arrested person before filing a case happens, and police instigate him in front of the press and term him as an accused person. It also violates the fair trial of an individual. No one has the right to infringe the right to a fair trial.

In Bangladesh, in particular, judicial intervention was executed by the CMM Court and instructed the procedure unlawful when the police arranged a press conference to cover the Javed Imam confessional statement. Then HCD also ruled nisi to the police that why media trials instructed by them not be unlawful?⁷⁵ Another incident shows that in 2013, three bloggers were arrested, and after the arrest, police presented them before the media at the DB office. Due to that incident, a writ petition had been filled.⁷⁶

So, from the above discussion, it can say that the Pretrial Publicity hinders Fair Justice. Media Published the Character, Previous History, and Personal information of an accused, violating the right to privacy and constitutional provision. It also breaks the court's dignity and is regarded as contempt of the court. The police also instigate the accused in front of the Media to confess his statement is another kind of problem that creates prejudice before the trial and interferes with fair justice. There is no robust press code in Bangladesh. It also violates the right of an accused.

⁷⁵ Bari. (n 1) 99

⁷⁶ *ibid* 100

Chapter 5 - Findings, Recommendation, and Concluding Remarks

5.1. Findings

1. The press media has no regulatory body that controls the press activity and specific guidelines for pretrial publicity.
2. Code of conduct 1993 was fixed under the Press Council Act 1947. Section 16 talks about the pretrial coverage and refrains the journalists from coverage in the pending stage which can influence a fair trial. In reality, there is no execution and proper enforcement of this section.16.
3. The Constitution article 39(2) provides reasonable restrictions for the press. Still, in high-profile cases, the media created overexposed pretrial publicity to hinder the fair trial, violated the accused rights, and established propaganda toward mass people. It violates the right to the fair trial of an accused under 35(3) of the Constitution.
4. The Universal Declaration of Human Rights provides the right to a fair trial and also ensures the right to expression in Article 19. Due to the impact of the Media Trial, it violates the right of an accused. It also shows that freedom of expression and the press contradict the right to a fair trial.
5. In the matter of Child rape and sexual assault, it publishes the victim's photos, age, and personal information in the headline that creating a gross violation of the right to privacy under article 31 of the Constitution.

6. Police also instigate the accused in front of the media before the trial for confessing his Crime which violates the administration of justice and hinders a fair trial. Sometimes, they arrested and held press conferences to see their notable activity without conclusive evidence. Gulshan Attack Case is that kind of example.

7. There is no proper accountability for journalists for publishing prejudiced news. Moreover, Section 2 (8) (a) (b) of the contempt of court act explains that anything writing, or oral that hindrance to administration of justice is called contempt of court. Lack of Accountability makes the space to publish overexposed news.

5.2. Recommendations

1. To solve the problem, The Press Council of Bangladesh should execute and implement the Code of Conduct Act,1993 with particular guidelines. They should include a Year Basis Session for the journalist to encourage and be conscious of executing the said Act in their work field.

2. Restrain pretrial publicity in the pending cases to ensure fair justice. A special Monitoring committee will be formed to look into the matter in any high-profile issue.

3. The press council act 1974 provides necessary power in sections 12,13 to protect the right against the newspaper that published prejudiced reports or broke the code of conduct. This article's proper execution and enforcement should be needed to protect from prejudice coverage.

4. Take the initiative to arrange seminal and proper training for the journalists' awareness and responsibilities in the pretrial stage.

5. Sometimes, Political party establishes their plan by using the press. It should be necessary to protect the media from any biasness and political influence.

6. Right of reply or opportunity to respond allows a person to defend himself from prejudiced news or public criticism published before. Due to Media Trial, the accused person faced lots of problems. That's why the right to reply shall be enacted to prevent the media trial and reduce the troubles of an accused.

5.3. Concluding Remarks

After all the discussion above, it can see that the Media trial bars fair justice of an accused. It also violates the fundamental right of individuals. Article 39 of the constitution provides the freedom of press and expression, but it has a reasonable restriction. When media misuse this provision, it's also contradictory to the freedom of expression. Police instigation is also a hindrance to fair justice. There is no immutable law to protect the accused from the Media Trial. The government should take the necessary step to protect the accused right. It also should implement proper Press law and training for the journalists to be aware of the Media trials.

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